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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 PERCY LAVAE BACON,

9 *Plaintiff,*

10 vs.

11 RANDY LASWELL, *et al.,*

12 *Defendants.*
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2:09-cv-02058-PMP-PAL

ORDER

14 This closed prisoner civil rights action comes before the Court on Plaintiff's second
15 motion (#12) for rehearing, which is filed under Rule 60.

16 Following the filing of a notice of appeal, the district court does not have jurisdiction
17 over a Rule 60 motion prior to issuance of the mandate, unless leave is obtained from the
18 Court of Appeals to consider the motion. *See, e.g., Williams v. Woodford*, 384 F.3d 567, 586
19 (9th Cir. 2004); *Gould v. Mutual Life Ins. Co.*, 790 F.2d 769, 772-73 (9th Cir. 1986). This matter
20 is pending before the Ninth Circuit, and this Court therefore does not have jurisdiction over the
21 present motion.

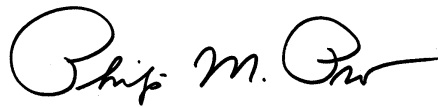
22 The Court does not see anything in the motion that would prompt it either to seek to
23 further entertain the motion or to grant the motion. *Cf. Gould*, 790 F.2d at 772 (the proper
24 procedure is for the petitioner to ask the district court whether it wishes to entertain the motion,
25 or to grant it, and then move for a remand in the court of appeals). The motion rehashes
26 arguments that the Court addressed directly or by implication in its prior order (#8) denying
27 rehearing. Even if, *arguendo*, the state courts erred in their rulings dismissing the civil rights
28 proceedings that Plaintiff filed in the state courts, any such error does not provide a basis for

1 equitable tolling so that Plaintiff then can relitigate the propriety of the prior dismissals in an
2 original action filed in federal district court. See #8, at 1-2. The Court reiterates its
3 certification pursuant to 28 U.S.C. § 1915(a)(3) that the pending appeal is not taken in good
4 faith. See #11.

5 The Court has ruled in this matter. The action is and has been closed, subject to the
6 action of the Court of Appeals on the pending appeal.

7 IT THEREFORE IS ORDERED that Plaintiff's second motion (#12) for rehearing is
8 DENIED.

9 DATED: August 26, 2010.

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13 PHILIP M. PRO
14 United States District Judge
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